

most important aspect of pawnshop business without which the shop could not function. However, the evidence adduced by the appellant clearly shows that the first respondent had nothing to do with the deposit transaction. He was not present at the transaction when the deceased received the deposit, neither did he sign the deposit receipt Exhibit P2. The appellant did not ask him for the refund of the deposit. In her words, she said "if Choo Shin Shian (the deceased) were alive today I would ask for refund from him and would not ask for refund from first and ninth defendants (respondents)". She thus sued the first respondent simply because after the death of the deceased she was unable to withdraw her deposit. Thus whatever the position of the first respondent as regards this pawnshop business — be he a mere licence holder or holding any other position — on account of which he in his defence was prepared to accept liability if the transactions were for the pawnshop business, in view of the appellant's evidence that the transaction was purely between her and the deceased, we do not think it right to make the order against the first respondent.

As regards the ninth respondent, it is clear that he was employed by the deceased to be the manager of the pawnshop. He is thus an agent of the deceased. He did not sign the deposit receipt Exhibit P2 as a party to the transaction, but in the capacity of an agent witnessing the transaction. As the appellant herself did not consider him to be party to the transaction, though party to the receipt, the ninth respondent is likewise not liable to make the restitution.

Before we finally conclude the judgment, it is pertinent for us to observe that pawnbroking business needs extensive changes. This business as an institution has outlived its usefulness. In the days when credit was hard to come by, pawnbroking business played a useful role. But today the banking system and other credit facilities are so well developed that banking and those facilities are available even in rural areas, where hitherto none existed. Credit can now easily be obtained. It is true that pawnbroking business is still required to satisfy the need of the poor; but surely the system as we have today lends itself to their oppression. The interest charged is exorbitant, in the region of 24% per annum despite the fact that the loan is accompanied by the pledge of articles usually far in excess of the loan it advances. The pawning is supposed to cover a short period of time and the pawner hopes to redeem the article and pay off the loan as soon as possible. In practice because of the high rate of interest which keeps on accumulating, the pawner is unable to find money to redeem the article as it becomes more expensive to do so than buying a new one. And so the article remains unredeemed and the loan unpaid, thereby giving right to the pawnshop to sell the article to satisfy its loan and keep the excess proceeds. No wonder the pawnshops become rich and their proprietors are prepared to pay high tender prices in order to obtain licences. The Government under the legislation is merely the grantor of pawnshop licences to those who win the tender. In view of the business being carried on not really for the benefit but at the expense of the poor masses, the Government should be more active and not just be content to receive licence fees. There is

A a crying need to make a fundamental change to the practice. A national institution covering the whole country run and financed by the Government seems justified. Such establishment should not be run solely with a view to making profits although under no circumstances should they incur losses, but to enable those in need of short term credit who cannot get it elsewhere to pawn their articles at reasonable rate of interest so that they will be able to redeem them when they have enough funds to do so. In fact this function could easily be performed by the National Saving Bank, which is now being successfully run. All that it needs is to add pawnbroking business to its existing functions and that law should thereby be suitably amended.

C Reverting to our appeal, we now make an order that the estate of the deceased as represented by the tenth respondent do refund to the appellant the sum of \$5,000 deposited by her with the deceased on January 22, 1971 and that interest on that sum at 6% per annum should also be paid with effect from the date of raising this action.

D The appeal against the tenth respondent is allowed with costs here and the courts below. The appeal against the first and the ninth respondents is dismissed with no order as to costs thereof.

Order accordingly.

Solicitors: *Dulip Singh & Co.; Mahindar & Co.;*

E *Lee & Co.*

JOSEPH v. GOVERNMENT OF SARAWAK & ANOR.

[F.C. (Suffian L.P., Lee Hum Hoe C.J. (Borneo) & Syed Othman F.J.) May 7 & August 23, 1980]

F [Kuching — Federal Court Civil Appeal No. 146 of 1979]

Administrative Law — Declaration — Application for declaration that plaintiff is servant of Government of Sarawak — Claim for arrears of pay — Establishment principles.

G The appellant had been engaged as a Senior Technical Assistant in the Public Works Department. He was seconded to the Kuching Water Board and while working there received a salary higher than what he would have got in the P.W.D. as he was given an acting allowance. Subsequently the appellant claimed to return to the P.W.D. He sought a declaration that he was at all material times a servant of the Government of Sarawak and he claimed the benefit of pay increases recommended by the Suffian and Harun Committees and arrears. The learned trial judge made an order declaring that the appellant had been at all material times a servant of the Government of Sarawak. Subsequently he dismissed the action, including the claim for arrears of salary. The appellant appealed.

H **Held:** in this case the administrative ruling was that as the appellant on secondment to the statutory body received more salary than what he would get on his substantive post the question of arrears did not arise. The learned judge was therefore right in holding that the appellant had failed to prove that he was entitled in law to the arrears.

I FEDERAL COURT.

T.O. Thomas for the appellant.

Denis Ong, Assistant Attorney-General, for the 1st respondent.

Daniel Tajem for the 2nd respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the Court): The question in this appeal is whether appellant/ plaintiff was entitled to arrears of salary. The arrears were for period up to December 31, 1971 in respect of two situations:—

- (i) claim based on *Gazette* Notification No. 2141 of September 10, 1971 on the basis that appellant was promoted to C4-6 with effect from April 1, 1961. The amount is \$6,720 (as shown in Exhibit P13 at page 299 of Appeal Record). This is the difference between what appellant received during the period ending December 31, 1971 and what he says he should have received.
- (ii) claim based on service circular No. 9 of 1971 (set out in Exhibit P16 at page 286 of Appeal Record) issued after the Suffian Report. The amount is \$4,015. The calculation is based on the actual salary received (as set out in Exhibit P16 at page 286 of the Appeal Record)."

In order to understand the claims it is necessary to refer to the writ and certain facts and establishment principles. By a writ dated October 12, 1971 appellant sued the State Government of Sarawak (1st defendant/respondent) and the Kuching Water Board (2nd defendant/respondent) when he failed to get the benefit of the clean wage system under the Suffian Report. He claimed the following:—

- "(1) A declaration that the plaintiff is and has been at all material times a servant of the Government of Sarawak.

alternatively

A declaration that the plaintiff is and has been at all material times a member of the public service of the State of Sarawak.

- (2) A declaration that the letter dated October 4, 1971 purportedly terminating the plaintiff's service is ultra vires, null and void and of no legal force and effect.
- (3) Arrears of pay for the period ending December 31, 1971.
- (4) Damages.
- (5) Costs."

As both respondents raised no objection to the application of appellant by way of summons-in-chambers made under Order 32 rule 6, the learned judge on February 7, 1972 made an order declaring that appellant had been at all material times from July 16, 1956 a servant of the Government of Sarawak. In other words, appellant succeeded in getting prayer (1).

At the trial appellant abandoned his claim for damages, i.e. prayer (4). It was submitted that the question of termination of his service was no longer an issue. So that the only issue remaining for determination was his entitlement to arrears of salary, i.e. prayer (3). The learned judge was clearly aware of this. Unfortunately, instead of dismissing the claim in respect of (3) as he was clearly of the view that appellant was not so entitled after considering the evidence, he dismissed the whole action. This is wrong as the court had earlier made a declaration to the effect that appellant was a Government servant up to December 31, 1971. But, this does not necessarily mean that appellant is entitled to succeed in the appeal. We still have to decide whether the learned judge was right in saying that appellant was not entitled to the arrears. The question of costs is involved. For obtaining a declaration in chambers appellant could not expect to get any substantial costs. If he succeeded in getting his arrears of salary he would be entitled to substantial costs as the matter had proceeded to trial. Since he failed in the main action to get arrears, he would have to pay costs in the usual manner.

Appellant was appointed by the Government of Sarawak (1st respondent) to the post of "Waterworks Assistant" in the grade of Senior Technical Assistant in the Public Works Department (PWD) with effect from July 16, 1956 on a year's probation. The terms of service were set out in the letter of offer dated May 8, 1956. (See pages 197 and 198 of the Appeal Record). He was engaged to supervise the operation and maintenance of the Water Treatment Plant at Batu Kitang, Kuching. It made no difference whether the designation Plant Superintendent or other title was used. His commencing salary was \$546 per month on Scale J4 (\$504x21-630). He was eligible for a first class return passage to India once in every four years. He accepted the terms and was appointed. In 1958 he was confirmed in his appointment as Technical Assistant, Special Grade, Scale C4 with effect from July 16, 1957 and admitted to the permanent and pensionable establishment. He worked with the Kuching Water Board (KWB) until December 31, 1971 when he returned to the PWD.

It was not in dispute that from July 16, 1956 to December 31, 1958 the Batu Kitang Water Treatment Plant was under the charge of the PWD. In fact it was part of the PWD. On January 1, 1959 the KWB was established under sections 2 and 3 of the Water Supply Ordinance (Cap. 141) with the Director of the PWD as Chairman of a Board of six members. The Batu Kitang Treatment Plant came under the management and charge of the Board. Appellant was officially seconded to the KWB on April 1, 1961 as he was paid by the KWB (See page 288 of Appeal Record).

In 1962 appellant reached the maximum of his salary scale. On November 17, 1962 and June 18, 1964 (See pages 206 and 207 of Appeal Record) he wrote to the Chairman of the KWB to be considered for higher scale appointment. On each occasion he received a negative reply. In July 1964 he applied for the post of Works Superintendent (Water Supply) in the PWD but was not successful. However, in a letter to appellant, the Secretary, Public Service Commission mentioned that "You may, however, be considered for promotion to Works Superintendent (Water Supply) should a vacancy occur in the KWB staff subject to recommendation being received from the Director of Public Works."

In 1965 the KWB created the post of Plant Superintendent on salary scale C4-6. By a letter dated August 6, 1965 (See page 212 of Appeal Record) the Engineer and Manager of the KWB wrote to appellant as under:—

"I wish to inform you that approval has been given for you to act in the Scale C4-6 commencing at \$930.00 per month as from the August 1, 1965, on the understanding that this acting promotion shall exist only as long as you are seconded for duty to the Kuching Water Board.

In the event of you reverting to the Public Works Department it must clearly be understood that your salary and status shall also revert to that which you would have enjoyed had you remained all the time in the Public Works Department Service."

Nothing can be clearer than the above letter. At that time appellant had not as yet made up his mind whether he wanted to be permanently transferred to the KWB.

Quite a number of officers from the PWD were seconded to work in the KWB. They were not sure whether they wanted to be transferred permanently to the KWB. To clear their doubts the Chairman of the KWB wrote a memorandum on November 8, 1962 covering various points raised by those officers to the Engineer and Manager of the KWB who in turn sent a copy of the memorandum to each of those officers including appellant. It is interesting to refer to appellant's letter of November 17, 1962 mentioned earlier when he applied for higher salary scale after reaching the maximum of his salary scale. After giving a brief history of his work during the last six years in Sarawak he stated in paragraph 3 as follows:—

"I was engaged by the Public Works Department to operate and maintain Batu Kitang Waterworks which has been providing only part of the supply of the town. In 1959 when the Kuching Water Board was constituted I continued to work for the Board on secondment."

Any suggestion that he was not seconded to the KWB would therefore be ridiculous.

Between 1962 and 1969 appellant had been asked whether he would be prepared to be transferred to the KWB permanently. Like his colleagues he was apprehensive and sought clarifications on various matters. Appellant was always evasive and never gave a firm reply to say he was prepared to accept a transfer. On August 17, 1964 the Engineer and Manager of the KWB wrote to appellant (See page 209 of Appeal Record) as follows:—

"I have been informed by the Chairman of the Kuching Water Board that it will be necessary for all P.W.D. staff who are on secondment to the Board to be recalled for duty to the Public Works Department before the end of 1964.

I have discussed this matter in detail with the Chairman and he informs me that should any seconded employee feel that he has grounds to remain with the Board he may apply to the Chairman through me stating the reasons why he wishes such a transfer.

For your information the Board is pressing for a pension scheme, the terms of which are no less favourable than those of Government.

Should any seconded employee be transferred to the Board every endeavour will be made to see that the officer will not lose by the transfer."

As he received no reply he wrote to appellant on October 6, 1964 asking for a reply (See page 210 of Appeal Record). On October 8, 1964 appellant replied referring to his services with the 1st respondent and his disappointment in not getting promotion to the post of Plant Superintendent. He ended his letter by saying he was in no position to decide on the transfer as he was waiting for further communication from the Chairman of the KWB on certain points. Nothing happened until the Engineer and Manager of the KWB wrote to him on January 7, 1969 stating that:—

"The Government Pensions Ordinance has been extended to the Kuching and Sibul Water Boards and the post you now hold has been gazetted as a pensionable office vide S.W.K. L.N.(F) 163 of the Sarawak Government Gazette Part II Volume XXIII No. 68 of November 8, 1968. In view of the above, I should be glad if you would confirm in writing as to whether or not you are prepared to be transferred permanently to the service of the Kuching Water Board.

Your decision will be taken as final and irrevocable. Your reply should quote this letter and be addressed to the Chairman through me."

(See page 218 of Appeal Record). The above letter was written as a result of an official memorandum

reference F/13557 dated December 30, 1968 from the State Secretary to the Director of Public Works (See page 291 of Appeal Record). In his reply on January 23, 1969 appellant raised a number of points and sought clarification by saying "I shall be glad if you could advise me on the above points and the nature of salary scale and the point of entry of the post which is offered to me on the permanent and pensionable establishment of the Kuching Water Board so that I can give you a firm reply on the subject of my transfer to the Kuching Water Board". (See Exhibit D9(B)).

On April 11, 1969 the Director of the PWD sent an official memorandum to the Accountant-General to the effect that the transfer of appellant was approved in accordance with PSC rules from Technical Assistant Special Grade Division II C4 which appellant held in the PWD to Plant Superintendent, Division II C4-6 KWB. Under the heading of "Remarks" it was stated that:—

"Mr. P.J. Joseph joined PWD as a Senior Technical Assistant on July 16, 1956 and was seconded to Kuching Water Board since April 1, 1961. He has now agreed to be transferred to the Kuching Water Board on the permanent and pensionable establishment as per copy of his option attached."

Appellant never raised the question of his transfer until he encountered difficulty with the Immigration Authority over his visit pass. He began to doubt whether there was any advantage in the transfer. So, eventually, he denied he ever gave his option to the transfer. He requested for a copy of his option (See page 226 of Appeal Record). It would seem the Chairman of the KWB was unable to produce the written option.

As stated earlier the post of Plant Superintendent on C4-6 in the KWB was created in 1965. The whole exercise of backdating was in a very unsatisfactory situation. He was acting in that post with effect from August 1, 1965 although he was officially seconded on April 1, 1961. He took advantage of the situation to his benefit by seeking changes in his incremental date from August 1, 1965 to July 1, 1963 as he had reached the maximum of his salary scale in July 1962. He could only proceed to the next higher scale post if promoted to such post. He was asked to act but not promoted. In any case he was never promoted properly. Neither the Director of the PWD nor the Chairman of the KWB is in a position to promote any one. This exercise was exclusively within the province of the Public Service Commission. The gazette notifications do not change anything.

Appellant was very quick to take advantage of another's mistake as was found by the learned judge. By his letter dated October 8, 1970 (See page 223 of the Appeal Record) appellant took the following line:—

"According to your memo dated April 11, 1969, I am transferred from Division II C4 Public Works Department to Division II C4-6 Kuching Water Board with effect from April 1, 1961. In July 1962 I reached maximum of scale C4 and my next increment was on August 1, 1965. As I have been in the continued employment of Kuching Water Board all these time I feel that my next increment should have been on July 1, 1963. Therefore I request you to consider backdating my increment."

Following his appointment to act in a higher post, Notification No. 1051 was published in the Sarawak Gazette, Part V dated May 9, 1969. It reads as follows:—

"Mr. P.J. Joseph, Technical Assistant, Special Grade, C4 Public Works Department, Kuching, to Plant Superintendent C4-6, Kuching Water Board, Kuching with effect from April 1, 1969."

This Notification was corrected in 1971 by another Notification No. 2141 showing the effective date to be April 1, 1961 as appeared in the official memorandum to the Accountant-General mentioned earlier on the representation of appellant. This would not have happened if a proper check was made before rushing to print. The effective date when appellant acted was 1965 as indicated in the letter dated September 6, 1965 referred to earlier. It could not be earlier than 1965 as no such post of Plant Superintendent in Scale C4-6 existed on the establishment. Another Gazette Notification No. 2142 was also published.

At this point it may be useful to mention the brief history of salary revision in Sarawak. Prior to 1956 the Sarawak Civil Service was divided into Senior and Junior Service. Following the Bain Report this classification was discontinued and replaced by Five Divisions, i.e. from I to V as from January 1, 1956. A circular No. 10/56 was issued to advise civil servants in the matter of salary conversion. The post of Senior Technical Assistant on the Salary Scale of J4 (\$504x21-630) was converted to E5A in Division IV on January 1, 1956. A year later this post was regraded from E5A Division IV to C4 in Division II. The post was renamed Technical Assistant, Special Grade on Scale C4 (\$690x30-870). The exercise resulted in a better salary scale. The difference between appellant's commencing salary of \$546 and the new starting basic salary was \$144 per month. Following the Suffian Report another salary revision was implemented with effect from January 1, 1970. The salary scales and terms and conditions of service of officers in the Public Services in Sarawak were revised as set out in a service circular in accordance with *Perkeliling Perkhidmatan Bil. 9 Tahun 1971* entitled "Revision of Salaries and Terms and Conditions of Service of Officers in the Public Service in East Malaysia (Sarawak)". Under the Suffian Report the new Salary Scale for C4 was (\$940x40-1100). The following officers were not covered by the circular:

- "(a) Members of the Education and Teaching Services;
- (b) Members of the Armed Forces;
- (c) Daily rated employees;
- (d) Officers on contract including designated officers on contract;
- (e) Officers who have had their services terminated on disciplinary grounds or as a result of conviction in a criminal court; and
- (f) Officers on secondment or transfer from West Malaysia."

As appellant was on secondment to the KWB at the time he was not covered by the circular.

Reference was made to what was said in *Majumder v. Attorney-General of Sarawak*.⁽¹⁾ All we want to say is that the facts in that case are entirely different from the facts in the present case. In the present case appellant was partly to be blamed as he questioned his transfer to the KWB because he had difficulties with the Immigration Authority over his visit pass. He was a victim of circumstances and establishment principles. He was also clearly a difficult man to the Chairman of the KWB. By a letter dated October 4, 1971 the Chairman of the KWB wrote

to appellant terminating his service on December 31, 1971 under the Kuching Water Board's Standing Order No. 44 without loss of pension rights. The first indication that appellant denied he was transferred to the KWB was in his letter of October 8, 1971 after receipt of the letter terminating his services. Paragraph 2 of his letter reads:—

"The Standing Order No. 44 of Kuching Water Board is not applicable to me as far as I am concerned as at no time I have consented to be transferred to Kuching Water Board from Sarawak Government service. Your memo PWD/SF/259(294) dated April 11, 1969 states that I am transferred to Kuching Water Board as per attached copy of my written option. This is completely false and I have requested you to provide me with a copy of such a written option. But to-date you have not provided me with the copy. Thus my services on the permanent and pensionable establishment of Sarawak Government is not altered in any way and I can only be subject to Sarawak Government General Orders and as such the termination notice you have served on me should be referred to the appropriate Public Service Commission."

Shortly after this he initiated action against the two respondents.

Evidence was given by officers attached to the Secretariat who must be assumed to know establishment principles. The arrears claimed were for periods he was working with the KWB. He had denied that he was even officially transferred to KWB. But the evidence clearly showed he was officially seconded on April 1, 1961. Because of this he succeeded in getting an amendment being made to Gazette Notification No. 1051. He had obtained a declaration that he was a Government servant since July 16, 1956. His claim was based on the fact that he was acting on the higher Scale of C4-6 in KWB in 1965 for which he was paid the appropriate acting allowance. The *Gazette Notification No. 2141* of September 10, 1971 was wrongly made. It was based on incomplete information.

There is no appeal against the refusal of the learned judge to make a declaration in terms of prayer (2) since appellant had obtained a declaration in terms of prayer (1). On the facts we can find nothing wrong with the decision of the learned judge that the purported promotion of appellant from Technical Assistant Special Grade, Division II C4 of the PWD to Plant Superintendent, Division II C4-6 *vide* Official Memorandum dated April 11, 1969 was *ultra vires*, null and void. The result was that the learned judge held that from April 4, 1961 to December 31, 1971 appellant was only seconded to the KWB. This conclusion was inevitable. In fact appellant admitted the fact of secondment to be even earlier in a letter.

It is difficult to see how appellant could succeed in his claim for arrears. First, there was no such post of Plant Superintendent on the Salary Scale of C4-6 in the KWB to be filled before 1965. Secondly, there is no question of an automatic promotion to a higher salary scale on a Government servant reaching the maximum of a lower salary scale. Thirdly, the proper authority dealing with promotion is the Public Service Commission. Fourthly, no Government servant can be promoted to a non-existing post. These are all establishment principles. Appellant was appointed to act in the higher post of C4-6 with effect from August 1, 1965. He was paid an acting allowance. This is also an establishment principle based on General Orders.

In view of the declaration that he was a Government servant since 1956 he could not succeed in claiming against the KWB which owed him nothing. He was paid an acting allowance when he acted in a higher post of C4-6 until he chose to return to the PWD. He could not say that he did not know that he would have to revert to the Salary Scale of C4 on returning to the PWD in the light of the letter dated September 6, 1965 from the Engineer and Manager of the KWB referred to earlier.

Appellant contended that the KWB was an alter ego of the PWD. If that was so then appellant must be prepared to subject himself to the terms of service in the KWB. If there was no vacant post of Plant Superintendent in C4-6 in either the establishment of the PWD or KWB in 1963 appellant would have no basis for claiming arrears of salary on a non-existent post. Even if there was a post of Plant Superintendent in C4-6 in the PWD appellant could claim no arrears unless he had been promoted by the PSC to that post.

The learned judge correctly pointed out that reliance on *Gazette* Notification No. 2141 did not advance appellant's case any further for the simple reason that the publication was based on the official memorandum dated April 11, 1969 which had been held to be *ultra vires*, null and void. It was based on incomplete information supplied by appellant. Also, it was a transfer notification in the sense that no promotion had been made by PSC. On December 31, 1971 appellant was drawing a salary of \$1100 per month as he was given normal annual increment on Scale C4-6 (\$690x30-870/930x30-1050/1080x30-1170). When he returned to the PWD he reverted to his substantive post of Technical Assistant Special Grade, Division II, C4 and his basic salary was \$870 per month. He reached the maximum in 1962. Had he not been acting in a higher post in the KWB he would still be on \$870 in 1965.

The effective date for conversion of the clean wage system under the Suffian Report was January 1, 1970. Appellant was working in the KWB until December 31, 1971. The service circular to give effect to *Perkeliling Perkhidmatan* Bil. 9 Tahun 1971 applies to appellant in respect of his substantive post of Technical Assistant, Special Grade, C4, in the PWD. The circular would operate retrospectively to January 1, 1970 while appellant was on secondment to the KWB. However, the Suffian Report was not implemented to benefit statutory bodies at the same time. Another circular memorandum No. 18/E0/2582/A dated July 15, 1974 was issued by the State Secretary to extend the Service Circular Bil. 9 of Tahun 1971 to statutory bodies. In West Malaysia the Harun's Report applies to statutory bodies. There were doubts as to the correct implementation of the terms of the Service Circular to appellant. The questions were:—

- "(a) Whether it was on January 1, 1970 whilst appellant was on secondment or January 1, 1972 the date of his return to the PWD.
- (b) If it were January 1, 1970 whether appellant would be entitled to arrears of salary for the period he was serving in the KWB while on secondment."

These matters involve establishment or service principles and practice and uniformity of implementation. These could only be dealt with by the administrative

- officers of some seniority and experience. Consequently, in fairness to appellant the State Secretary wrote to the Director-General of Public Services Department, Malaysia for clarification. (See page 283 of Appeal Record). The Service Circular Bil. 9 of Tahun 1971 is a Federal Service Circular issued by the said Director-General. A ruling was given. (See page 285 of Appeal Record). The State Secretary acted on the ruling. Service circulars and rulings have administrative effect. The subordinates must obey his superior. This is an establishment principle.

- In effect, the Director-General ruled that the substantive salaries of officers seconded to statutory bodies would be revised as from January 1, 1970. However, the ruling stated clearly that as appellant on secondment to the statutory body received more salary than what he would get on his substantive post the question of arrears did not arise. As the learned judge pointed out in his judgment (see page 192 of the Appeal Record) that:—

- "From January 1, 1970 to July 31, 1970 the plaintiff received a basic salary of \$1,050 plus \$78 child allowance making a total of \$1,128 per month.

- From August 1, 1970 to July 31, 1971 the total salary was \$1,128 per month made up of \$1,080 as his basic salary and \$81 child allowance. (Total should be \$1,161).

- From August 1, 1971 to December 31, 1971 plaintiff's basic salary was \$1,110 plus \$83 child allowance amounting to \$1,193 per month.

- On the other hand, on January 1, 1970 till December 31, 1971 the basic salary of the plaintiff in his substantive post in the PWD as Technical Assistant Special Grade, Division II C4 would be \$870 per month. If this were to be converted to Suffian Clean Wage System the amount would be \$1,110 per month during the period. So, it is clear that when the plaintiff was on secondment in the KWB he was getting more salary than the salary of his substantive post in the PWD when converted to the Suffian Clean Wage System from January 1, 1970 to December 31, 1971.

- Since the plaintiff was receiving more than he would be entitled when converted to the new system, the question of arrears does not arise. In submitting his claim for the alleged arrears of \$4,015 for salary and regional allowance, the plaintiff was basing it on the salary of Plant Superintendent, Division II C4-6 he was getting during the relevant period. In my judgment, having regard to the replies from the Director-General Public Services, Malaysia, the plaintiff was not entitled to make his claim on this basis."

- We agree entirely with the learned judge. He was, therefore, right to hold that appellant had failed to prove that he was entitled in law to be paid arrears amounting to \$4015 by either respondents. The learned judge also held that appellant failed in his claim for \$6,720. In other words appellant failed in respect of both claims.

- We have stated earlier that the learned judge was wrong to dismiss the whole action. The proper order in the lower court should be that the claim in respect of arrears of salary, i.e. prayer (3) be dismissed with costs in the lower scale. Subject to this we would dismiss the appeal with costs. Deposit to respondents against taxed costs.

Order accordingly.

Solicitors: Thomas & Co.; Ibrahim & Co.